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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/646,639

08/22/2003

Thomas J. Fogarty

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EXAMINER

PREBILIC, PAUL B

ART UNIT

PAPER NUMBER

3774

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/646,639	Applicant(s) FOGARTY ET AL.	
	Examiner Paul B. Prebilic	Art Unit 3774	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 June 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) 3-5,35,36,42-44,46-50,55,57,64 and 97-107 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,9,10,16,21,29-32,34,37,41,51-54,56,74,96,113,114 and 116-130 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/22/08</u> . | 6) <input type="checkbox"/> Other: _____ |

Continuation of Disposition of Claims: Claims pending in the application are 1-5,9,10,16,21,29-32,34-37,41-44,46-57,64,74,96-107,113,114 and 116-130.

The indicated allowability of claims 96, 113, 114, and 116-118 is withdrawn in view of the newly discovered reference(s) to Griffin et al. Rejections based on the newly cited reference(s) follow.

Election/Restrictions

Claims 3-5, 35, 36, 42-44, 46-50, 55, 57, 64, and 97-107 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on May 22, 2006.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 96, 113, 114, 119-123, 125, 126, and 128-130 are rejected under 35 U.S.C. 102(b) as being anticipated by Griffin et al (US 6,241,765). Griffin anticipates the claim language wherein:

- the annular body as claimed is the shoulder (57) or ring (29) of Griffin; see Figures 7, 4, and 3 as well as column 5, lines 19-55;
- the receptacles as claimed are the openings (96) and the shoulder portions therearound;
- the shelf as claimed is the surface (82);
- the slope as claimed is the inner surface of the opening (96);

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- the attachment devices as claimed are the pins (91);
- the detents as claimed are the barbs (94) and/or heads (92).

Regarding claim 113 and similarly worded claims, the heart valve as claimed is the valve body (14) of Griffin, the gasket as claimed is the ring (29), and the sewing ring or skirt as claimed is the shoulder (57). The inner radius is the portion of the opening (96) closest to the central axis of the valve, the outer radius as claimed is the farthest portion of the opening (96) from the central axis, and the gasket radius is the inner radius of the valve ring (29).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 9, 10, 16, 21, 29-32, 34, 37, 41, 51-54, 56, 74, 116-118, 124, and 127 are rejected under 35 U.S.C. 103(a) as being unpatentable over Griffin et al (US 6,241,765) in view of Colvin et al (US 6,066,160) and Duncan (US 4,548,202). Griffin meets the claim language as explained in the Section 102 rejection *supra* but fails to disclose teeth in each receptacle and/or separate can elements as claimed. However, Colvin teaches that it was known to make separate receptacles (e.g. devices (12) or (70) of Colvin) that ratchet sutures thereto in the implantation of heart valves; see Figure 4 and column 9, line 59 et seq.

Griffin explains that any suitable fastening system of pins and staples can be utilized therewith; see column 5, lines 31-50. Duncan teaches that it was known to the tissue fastening art to utilize fasteners that have teeth on both the staple legs and in the receptacles; see the abstract, Figures 1 to 4 and columns 5 and 6.

Therefore, it is the Examiner's position that it would have been obvious to utilize separate receptacles, as taught by Colvin, that include teeth both on the pin and in the receptacle opening, as taught by Duncan, in order to provide wider ranges of tissue size fastening capabilities to the Griffin device.

Conclusion

Applicant should specifically point out the support for any amendments made to the disclosure, including the claims (MPEP 714.02 and 2163.06). Due to the procedure outlined in MPEP 2163.06 for interpreting claims, it is noted that other art may be applicable under 35 USC 102 or 35 USC 103(a) once the aforementioned issue(s) is/are addressed.

Applicant is respectfully requested to provide a list of all copending applications that set forth similar subject matter to the present claims. A copy of such copending claims is respectfully requested in response to this Office action if the application is not stored in image format (i.e. the IFW system) or published.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Paul B. Prebilic whose telephone number is (571) 272-4758. He can normally be reached on 6:30-5:00 M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Isabella can be reached on 571-272-4749. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Paul Prebilic/
Paul Prebilic
Primary Examiner
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